

MEMO# 32736

September 3, 2020

ICI Supplemental Comment Letter on SEC's Fund Names Rule

[32736]

September 2, 2020 TO: ICI Members SUBJECTS: Derivatives

Disclosure

Fund Accounting & Financial Reporting

International/Global

Portfolio Oversight RE: ICI Supplemental Comment Letter on SEC's Fund Names Rule

As we previously informed you, the SEC published a release (“Release”) seeking public comment on the framework for addressing potentially misleading names of registered investment companies and business development companies under Section 35(d) of the Investment Company Act of 1940, rule 35d-1 thereunder (the “Names Rule”), and the antifraud provisions of the Federal securities laws. We filed a comment letter on May 5 responding to the request.[\[1\]](#) We filed a supplemental letter on August 31, which is attached and summarized below.

Background. The Names Rule applies to fund names that suggest a focus in a particular industry or group of industries. In the Release, the Commission raises several questions concerning how funds attribute portfolio investments to particular industries for purposes of the Names Rule and whether the Commission should consider requiring funds to comply with specific attribution tests (such as revenue- or asset-based tests).[\[2\]](#)

ICI Letter. We recommended that the Commission permit funds flexibility to identify portfolio investments as being investments in specified industries. We reasoned that the Commission should not prescribe specific attribution tests and instead should permit funds to classify portfolio investments in any “reasonable” manner which “should not be so broad that the primary economic characteristics of the companies in a single class are materially different.” We pointed out that our recommended approach is consistent with analogous Commission guidance regarding how to classify industries for industry concentration policy purposes. The letter also notes that such flexibility to select industry attribution methods for Names Rule purposes would be subject to the ample protections afforded by Section 35(d)’s prohibition on “materially deceptive or misleading” fund names.

The letter advocated for a flexible approach, which should allow a fund to utilize any of the types of tests that the Commission describes in the Release (and others not described in the Release). For instance, a fund should be able to adhere to industry classifications provided by third parties, such as the Global Industry Classification Standard (GICS) or

Standard Industrial Classification (SIC) codes, its own industry classification method, or a combination.

We further recommended that, as part of its own industry classification method, a fund should be permitted to utilize a revenue-based approach for industry attribution for Names Rule purposes. We cautioned that the Commission should not mandate that a fund must use such an approach or adhere to a one-size-fits-all threshold or other prescriptive measure for revenues attributable to the industry suggested by the fund's name. For example, the fund should be allowed to reasonably establish a revenue-based method that permits investment in early-stage startups or "pre-revenue companies" in the relevant industry.^[3]

Finally, we stated that, in any case, reasonableness – the approach for industry concentration – and the importance of consistency in approach, underpinned by the protections of Section 35(d), should be the touchstones for a fund's Names Rule industry attribution method.

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[Attachment](#)

endnotes

^[1] See ICI Memorandum No. 32445, dated May 6, 2020, available at https://www.ici.org/my_ici/memorandum/memo32445.

^[2] See Release at page 13.

^[3] See, e.g., NYSE Listed Company Manual § 902.02 (defining "pre-revenue company" to mean "a company whose initial listing date is on or after June 1, 2019, and which has not recorded revenue in excess of \$5 million in either (i) the most recent completed fiscal year prior to listing or (ii) during the year of listing through the most recently completed fiscal quarter before the listing date.").